

**CIVIL COVER SHEET**

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

BARBARA ELROD

**DEFENDANTS**

NCO FINANCIAL SYSTEMS, INC.

(b) County of Residence of First Listed Plaintiff \_\_\_\_\_

County of Residence of First Listed Defendant \_\_\_\_\_

(c) Attorney's (Firm Name, Address, Telephone Number and Email Address)

Craig Thor Kimmel, Esquire  
Kimmel & Silverman, P.C.  
30 E. Butler Pike  
Ambler, PA 19002  
(215) 540-8888

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- |   | PTF                        | DEF                        |   | PTF                        | DEF                        |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State                   | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State                | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	<b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	<b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act <b>IMMIGRATION</b> <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input checked="" type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
			<b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	
			<b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

**V. ORIGIN**

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from another district (specify) \_\_\_\_\_
- ☐ 6 Multidistrict Litigation
- ☐ 7 Appeal to District Judge from Magistrate Judgment

**VI. CAUSE OF ACTION**

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C SECTION 1692

Brief description of cause:

Fair Debt Collection Practices Act

**VII. REQUESTED IN COMPLAINT:**
☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ☐ No**VIII. RELATED CASE(S)**

(See instructions):

JUDGE \_\_\_\_\_

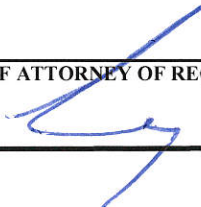
DOCKET NUMBER \_\_\_\_\_

Explanation:

DATE

SIGNATURE OF ATTORNEY OF RECORD

07/27/12



**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**CASE MANAGEMENT TRACK DESIGNATION FORM**

BARBARA ELROD	:	CIVIL ACTION
	:	
v.	:	
	:	
NCO FINANCIAL SYSTEMS, INC.	:	NO.
	:	

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a Case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a Case Management Track Designation Form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. § 2241 through § 2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits. ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. (X)
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) ( )
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

07/27/12  
Date

Craig Thor Kimmel  
Attorney-at-law

Plaintiff, Barbara Elrod  
Attorney for

215-540-8888  
Telephone

877-788-2864  
FAX Number

kimmel@creditlaw.com  
E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: 430N. Mathers St., Orleans IN 47452

Address of Defendant: 507 Prudential Rd., Horsham PA 19044

Place of Accident, Incident or Transaction: \_\_\_\_\_  
(Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☒

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
4. Is this case a second or successive habeas corpus, social security appeal, or pro se civil rights case filed by the same individual?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☐ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☒ All other Federal Question Cases 15 U.S.C. § 1692  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify)

**ARBITRATION CERTIFICATION**

(Check Appropriate Category)

I, Craig Thar Kimmel, counsel of record do hereby certify:

- ☐ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;
- ☐ Relief other than monetary damages is sought.

DATE: 07/27/12

Attorney-at-Law

57100

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: 07/27/12

Attorney-at-Law

57100

Attorney I.D.#



1 UNITED STATES DISTRICT COURT  
2 FOR THE  
3 EASTERN DISTRICT OF PENNSYLVANIA

4 BARBARA ELROD, )

5 Plaintiff )

6 v. )

7 NCO FINANCIAL SYSTEMS, INC., )

8 Defendant )

Case No.:

COMPLAINT AND DEMAND FOR  
JURY TRIAL

(Unlawful Debt Collection Practices)

10 **COMPLAINT**

11 BARBARA ELROD ("Plaintiff"), by and through her attorneys, KIMMEL &  
12 SILVERMAN, P.C., alleges the following against NCO FINANCIAL SYSTEMS, INC.  
13 ("Defendant"):

14 **INTRODUCTION**

15 1. Plaintiff's Complaint is based on the Fair Debt Collection Practices Act, 15  
16 U.S.C. § 1692 *et seq.* ("FDCPA").

17 **JURISDICTION AND VENUE**

18 2. Jurisdiction of this court arises pursuant to 15 U.S.C. § 1692k(d), which states  
19 that such actions may be brought and heard before "any appropriate United States district court  
20 without regard to the amount in controversy," and 28 U.S.C. § 1331 grants this court original  
21 jurisdiction of all civil actions arising under the laws of the United States.

22 3. Defendant has its corporate headquarters in the Commonwealth of Pennsylvania  
23 and as such, personal jurisdiction is established.

24 4. Venue is proper pursuant to 28 U.S.C. § 1391(b)(1).  
25

**PARTIES**

5. Plaintiff is a natural person residing in Orleans, Indiana 47452.

6. Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §1692a(3).

7. In the alternative, Plaintiff is a person granted a cause of action under the FDCPA. See 15 U.S.C. §1692k(a), and Wenrich v. Cole, 2000 U.S. Dist. LEXIS 18687 (E.D. Pa. Dec. 22, 2000).

8. Defendant is a national debt collection company with its corporate headquarters located at 507 Prudential Road, Horsham, PA 19044.

9. Defendant collects, and attempts to collect, consumer debts incurred, or alleged to have been incurred, for personal, family or household purposes on behalf of creditors and debt buyers using the U.S. Mail, telephone and/or internet.

10. Defendant is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6), and repeatedly contacted Plaintiff in an attempt to collect a debt.

11. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

**FACTUAL ALLEGATIONS**

12. At all pertinent times hereto, Defendant was hired to collect a consumer debt and attempted to collect that debt from Plaintiff.

13. Upon information and belief, the debt at issue arose out of transactions that were primarily for personal, family, or household purposes.

14. Plaintiff never incurred any debts in connection with business or commercial activities and, therefore, the alleged debt, if truly an obligation owed by him, could have only arisen from a financial obligation for primarily personal, family or household purposes.

1           15.     Beginning in or around February 2012, and continuing through July 2012,  
2 Defendant continuously and repeatedly contacted Plaintiff on her home telephone seeking and  
3 demanding payment of the alleged debt.

4           16.     During the relevant period, Defendant contacted Plaintiff, on average, two (2) to  
5 four (4) times a day, totaling at times, more than ten (10) collection calls a week.

6           17.     Plaintiff uses the caller-id service for her home telephone and does not answer  
7 calls from numbers that she does not recognize.

8           18.     Plaintiff was unfamiliar with Defendant's telephone number and did not answer  
9 many of Defendant's collection calls. As a result of the call methods employed by NCO,  
10 Plaintiff was exposed to repeated ringing of her telephone when she did not answer, and in those  
11 instances when Defendant left a message, all were pre-recorded computer-generated and  
12 generic.  
13

14           19.     Plaintiff had difficulty understanding the messages as the speed of the automated  
15 recordings utilized by Defendant were too fast and unclear.

16           20.     After enlisting assistance from others to understand the message, Plaintiff called  
17 the contact number provided in voicemails, (215) 442-8300, and heard a computer-generated,  
18 pre-recorded greeting.  
19

20           21.     Following the prompts, Plaintiff entered the first four letters of her last name, but  
21 was unable to speak with a live collector. Each time after that, if she did not enter an extension  
22 number, the computer automatically ended the call after abruptly saying "goodbye."

23           22.     Defendant called incessantly, yet provided no means for Plaintiff to return the  
24 call and speak with a human being.

25           23.     Defendant's actions were harassing and annoying, unfair and unconscionable as

1 it failed to provide any information about the debt in messages in addition to making it  
2 impossible to speak with a live collector.

3 24. Upon information and belief, Defendant's use of automated dialing and computer  
4 generated calls had the effect of harassing Plaintiff and frustrating her efforts to respond.

5 25. Defendant placed at least one collection call to Plaintiff at or after 9:00 p.m., an  
6 inconvenient time.

7 26. Within five days of its initial communication with Plaintiff, Defendant failed to  
8 send Plaintiff written notification regarding her rights to dispute the debt and/or request  
9 verification of the debt.  
10

11 **DEFENDANT VIOLATED THE**  
12 **FAIR DEBT COLLECTION PRACTICES ACT**

13 27. In its actions to collect a debt, Defendant violated the FDCPA in one or more of  
14 the following ways:

15 **COUNT I**

- 16 a. A debt collector violates §1692c(a)(1) of the FDCPA by contacting a  
17 consumer at any unusual time or place or a time or place known or which  
18 should be known to be inconvenient to the consumer, and shall not contact a  
19 consumer before 8:00 a.m. and/or after 9:00 p.m.  
20  
21 b. Here, Defendant violated §1692c(a)(1) of the FDCPA by contacting Plaintiff's  
22 home telephone at 9:00 p.m. and continuing the call past 9:00 p.m.

23 **COUNT II**

- 24 c. A debt collector violates §1692d of the FDCPA by engaging in conduct the  
25 natural consequence of which is to harass, oppress, or abuse any person in

1 connection with the collection of a debt;

- 2 d. A debt collector violates §1692d(5) of the FDCPA by causing a consumer's  
3 phone to ring repeatedly or continuously with the intent to annoy, abuse, or  
4 harass Plaintiff.
- 5 e. Here, Defendant violated §§1692d and 1692d(5) by continuously and  
6 repetitively calling Plaintiff's home telephone (2) to four (4) times a day,  
7 resulting at times, in more than ten (10) collection calls a week in attempts to  
8 collect the alleged debt.

9  
10 **COUNT III**

- 11 a. A debt collector violates §1692f of the FDCPA by using unfair and  
12 unconscionable means in connection with the collection of a debt.
- 13 b. Here, Defendant's conduct was unconscionable and violative of §1692f of the  
14 FDCPA because it continuously and repetitively left Plaintiff automated  
15 voicemails with a number to call that did not allow Plaintiff to speak with a  
16 live collector.

17 **COUNT IV**

- 18 a. A debt collector violates §1692g(a) of the FDCPA by failing to send to the  
19 consumer, with five days after its initial communication with a consumer in  
20 connection with the collection of a debt, a written notice containing: (1) the  
21 amount of the debt; (2) the name of the creditor to whom the debt is owed; (3)  
22 a statement that unless the consumer, within thirty days after receipt of the  
23 notice, disputes the validity of the debt, or any portion thereof, the debt will be  
24 assumed to be valid by the debt collector; (4) a statement that if the consumer  
25



1 notifies the debt collector in writing within thirty-day period that the debt, or  
 2 any portion thereof, is disputed, the debt collector will obtain verification of  
 3 the debt or a copy of a judgment against the consumer and a copy of such  
 4 verification or judgment will be mailed to the consumer by the debt collector;  
 5 and (5) a statement that, upon the consumer's written request within the thirty-  
 6 day period, the debt collector will provide the consumer with the name and  
 7 address of the original creditor, if different from the current creditor.

- 8  
 9 b. Here, Defendant violated §1692g(a) of the FDCPA by failing to send written  
 10 notification, within five (5) days after its initial communication with Plaintiff,  
 11 advising Plaintiff of her rights to dispute the debt or request verification of the  
 12 debt or providing her with the name of the original creditor and the amount of  
 13 the debt.

14 WHEREFORE, Plaintiff, BARBARA ELROD, respectfully prays for a judgment as  
 15 follows:

- 16 a. All actual damages suffered pursuant to 15 U.S.C. § 1692k(a)(1);  
 17 b. Statutory damages of \$1,000.00 for the violation of the FDCPA pursuant to  
 18 15 U.S.C. § 1692k(a)(2)(A);  
 19 c. All reasonable attorneys' fees, witness fees, court costs and other litigation  
 20 costs incurred by Plaintiff pursuant to 15 U.S.C. § 1693k(a)(3); and  
 21 d. Any other relief deemed appropriate by this Honorable Court.

22 **DEMAND FOR JURY TRIAL**

23 PLEASE TAKE NOTICE that Plaintiff, BARBARA ELROD, demands a jury trial in  
 24 this case.

25 RESPECTFULLY SUBMITTED,

1  
2 Date: 07/27/12

By: 

Craig Thor Kimmel

Attorney ID No. 57100

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